IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5067 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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DILIPKUMAR S GOHEL & 1 - Petitioner(s)
Versus
A'BAD MUNICIPAL COPORATION & 1 - Respondent(s)

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Appearance :
MR AM RAVAL for Petitioner(s) : 1 - 2.
M/S ANAND ADVOCATES for Respondent(s) : 1,
MR DIPAK C RAVAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/09/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, order and direction for

declaration that the employees of respondent No.2 – Municipal General Hospital of the Corporation are entitled to the benefit of Circular dated 15th January, 1992 in case of compassionate appointment of the member of the employees, who became medically unfit.

2. It is the case of the petitioners that the petitioner No.1 applied for compassionate appointment as petitioner No. 2 - father of petitioner No.1 was declared medically unfit and therefore, as per the Resolution dated 15th January, 1992 of the Municipal Corporation, the application was submitted by the petitioner No.1 for the appointment on compassionate ground. However, the same came to be rejected by communication dated 2nd February 1996 on the ground that the said Circular dated 15th January 1992 would be applicable only to the employees/Safai Kamdar, who are working in the Health Conservancy and Refuse Department.

3. Shri A. M. Raval, learned advocate appearing for petitioners No.1 and 2 has vehemently submitted that

the respondents have materially erred in not making the circular dated 15th January, 1992, applicable to the petitioners and the action of respondent No.2 in not making the appointment of petitioner No.1 on compassionate ground is absolutely illegal. It is submitted that the Safai Kamdar working in the Department other than Health Conservancy and Refuse Department are also Safai Kamdars and therefore, there is no justification to apply aforesaid Circular dated 15th January, 1992 to only those employees. Therefore, it is requested for the aforesaid declaration.

4. This petition is opposed by Shri Dipak Raval, learned advocate appearing for the respondent and affidavit-in-reply is also filed. It is submitted that there is a justification in appointment on compassionate ground to those Safai Kamars, who were working in Health Conservancy and Refuse Department, who were found to be unfit. It is submitted that as it was found that the employees/Safai Kamdar of the Health Conservancy and Refuse Department have to work on road in all season and they have to lift the waste

garbage and dirty things and they have to work in mud and filth in monsoon season also and it was found that in view of their duties the ratio of medical unfitness of such employees were found high and therefore, aforesaid circular came to be issued with regard to Safai Kamdar only of that Department and therefore, it is requested to dismiss the present application.

5. On considering the Circular dated 15th January 1992, it seems that it is to be applicable with regard to Safai Kamdar of Health Conservancy and Refuse Department only and it is the policy of the Corporation to make appointment on the compassionate ground on declaration of Safai Kamdar of the said department as unfit. Therefore, when admittedly petitioner No.2 was not serving in the Health Conservancy and Refuse Department, the respondents have rightly not applied the Circular dated 15th January 1992. Under the circumstances, the submissions on behalf of the petitioners can not be accepted. Even otherwise, it is required to be noted that petitioner No.1 is claiming appointment on

compassionate ground. It is required to be noted that petitioner No.2 has become unfit somewhere in the year 1994 and as observed by the Honourable Supreme Court in the case of ***State of Jammu and Kashmir and others Vs. Sajad Ahmed reported in (2006) 5 SCC, 766,*** a compassionate appointment is an exception to general Rule that appointment to public office should be based on competitive merits. Once it is foundd that in spite of disability and/or rendering an employee unfit, the petitioners have survived for more than 14 years. The same would be a material fact for not making appointment of the petitioner on compassionate ground. In the present case also, 19 years have passed after the disability of petitioner No.2 and for all these years, the petitioners have survived. Under these circumstances, considering the Judgment of ***State of Jammu and Kashmir and others Vs. Sajad Ahmed*** (Supra), the petitioner No.1 is not entitled to the relief for appointment on the compassionate ground.

6. For the reasons stated above, the petition fails and the same is accordingly dismissed. Rule is

discharged. There shall be no order as to costs.

(M. R. SHAH, J.)

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